

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10427 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?

4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

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SWASTIK CO.OP HOUSING SOC LTD

Versus

RAMESHBHAI JETHALAL VYAS

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Appearance:

MR PRASHANT G DESAI for Petitioner  
MR HS MUNSHAW for Respondent Nos. 1 to 4.  
MR KS NANAVATI for Respondent Nos.5 to 7.

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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 29/12/1999

ORAL JUDGEMENT

1. Rule. Mr. H.S. Munshaw, learned advocate  
waives service of notice of rule on behalf of respondent  
Nos.1 to 4 whereas Mr. K.S. Nanavati, learned advocate  
waives service of notice of rule on behalf of respondent

Nos.5 to 7.

2. Having heard the learned advocates appearing for the parties and having perusal of the averments made in the petition and in the facts and circumstances of the case, the order recorded below Exh.4 in Revision Application No. 349 of 1999 by the Co-operative Tribunal is modified as under:

- (i) The respondents No.5 to 7 should deposit with the petitioner Co-operative Society an amount of Rs.2,00,000/- (Rupees two lacs only) without prejudice to their rights and contentions in the pending proceedings.
- (ii) On such deposit being made, respondents No.5 to 7 are permitted to start the restaurant without prejudice to the rights and contentions of the parties.
- (iii) Respondents No.5 to 7 should file an undertaking before this Court within a period of one week hereof to the effect that they will not create any nuisance or annoyance. They would take steps to see that the customers of the restaurant do not park their vehicles on the society road. They will not throw the left-overs of the food in the rear portion of the building and that the respondents No.5 to 7 will stop the use of the premises as a restaurant, if ultimately they are not successful in the legal proceedings, finally.
- (iv) The petitioner society will refund the amount of deposit without interest to respondents No.5 to 7, in the event of the petitioner society succeeding in the legal proceedings and the respondents No.5 to 7 being asked to close down the restaurant on account of the orders of the Court. Even in the event of the respondents No.5 to 7 succeeding in the legal proceedings, the petitioner society will refund the amount of deposit without interest to respondents No. 5 to 7.
- (v) The acceptance of the amount of Rs.2,00,000/- (Rupees two lacs only) is subject to the resolution passed by the General Body.

4. It is also directed that the Board of Nominees before whom Lavad Suit No. 1588 of 1999 is pending shall give top priority to the hearing of the suit and shall

decide the same as early as possible and preferably on or before 30.6.2000.

5. In view of the above, the petition succeeds in part and accordingly it is partly allowed. The impugned order recorded below Ex.4 in Revision Application No. 349 of 1999 by the Cooperative Tribunal is modified to the aforesaid extent. Rule is made absolute to the aforesaid extent with no order as to costs.

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(karan)